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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of

Implementation of Sections 3(n)
and 332 of the Communications Act

Regulatory Treatment of Mobile
Services

)
)
) GN Docket No. 93-252
)
)

) DOCKET FILE COPY ORIGINAL

To: The Commission

**EMERGENCY MOTION FOR PARTIAL STAY
OF THE
NATIONAL ASSOCIATION OF BUSINESS
AND EDUCATIONAL RADIO, INC.**

The National Association of Business and Educational Radio, Inc. ("NABER") by its attorneys and pursuant to Section 1.106(n) of the Commission's Rules, 47 C.F.R. §1.106(n), respectfully requests a partial Stay of the Commission's August 9, 1994 Third Report and Order in the above-captioned proceeding.¹ Specifically, NABER requests a Stay of that portion of the Third Report and Order which adopted a new FCC Form 600 and mandated its use beginning January 2, 1995.² Immediate action on this Motion is necessary to

¹FCC 94-212, released September 23, 1994. Although the Third Report and Order was released more than one month ago, it has yet to appear in the Federal Register. Therefore, the date for filing Petitions for Reconsideration has not been established. However, the Commission stated that the effective date of the new rules will be January 2, 1995. The significant amount of time and effort which will need to be expended by the wireless industry as well as the Commission in preparing for the acceptance of the new FCC Form 600 compels NABER to file this Motion for Partial Stay in advance of the Petition for Reconsideration deadline. NABER will timely file a Petition for Reconsideration on issues raised in the Third Report and Order at the appropriate time.

²Third Report and Order at para. 298.

prevent significant disruption of the Commission's processes and the continued operation of the wireless industry.

I. BACKGROUND

In its Reply Comments in this proceeding, NABER supported the suggestions of McCaw Cellular Communications, Inc. ("McCaw") and the Personal Communications Industry Association ("PCIA"), which each urged the Commission to defer action on the proposed FCC Form 600. As stated by McCaw, the form "... has not received the review and analysis required to assess any potential problems with its preparation and processing in a range of services."³ PCIA requested that the Commission delay implementation of the form until such time as "... potential applicants can be educated about its use."⁴ Other parties seeking a delay in implementation of the Form 600 included AirTouch Paging and Arch Communications Group, Inc., Celpage, Inc., Dial Page, Inc., GTE Service Corporation, Metrocall, Inc., Network USA and Nextel Communications, Inc.

The Commission chose not to defer adoption of the Form 600, believing that a delay in implementation of the form would "generate more confusion".⁵ In addition, the Commission stated that "... concerned parties will have sufficient lead time to familiarize themselves with the Form 600."⁶

II. THE COMMISSION MUST DELAY IMPLEMENTATION OF FCC FORM 600

³Comments of McCaw at 32.

⁴PCIA Comments at 24.

⁵Third Report and Order at para. 293.

⁶Third Report and Order at para. 298 (footnote omitted).

For the reasons discussed below, NABER respectfully requests that the Commission immediately reconsider its decision to implement FCC Form 600 on January 2, 1995 and stay the effective date for the new form until at least six months after the form has been finalized and the Commission is capable of accepting the form.

A. FCC Form 600 Has Not Been Finalized

While a preliminary version of the FCC Form 600 was attached to the Third Report and Order, the form has not been finalized. Although the form has been submitted to the Office of Management and Budget ("OMB"), the form has as yet not been approved by OMB. Based on contacts with various Commission personnel, it is NABER's understanding that the FCC has already made some changes to the form and does not expect OMB to complete its review until at least the first week of December.⁷ Therefore, at this time there is no final form for the wireless industry to become familiar with in anticipation of the January 2, 1995 deadline.

B. Form 600 Will Not Be Widely Distributed In Time For The Deadline

It is NABER's understanding that after final approval by OMB it will take the FCC at least 10 to 15 working days to print the forms and make them available to the public. Therefore, there will be less than two weeks for an industry made up of hundreds of thousands of licensees to obtain copies of the form and become familiar with it before January 2, 1995. Applicants requesting bulk copies of forms from the Commission typically do not receive

⁷Attached hereto is a copy of Commission Public Notice No. 50369, dated October 26, 1994, which states that the Commission has requested approval of the Form 600 by OMB by December 1, 1994.

the forms for four to six weeks after ordering.⁸ In addition, it is unrealistic to expect full distribution of the form over the year-end holidays.

C. A Change-Over Is Impossible In Two Weeks

In addition, frequency advisory committees will need to discontinue accepting FCC Form 574s prior to the new form being available in order to accommodate the Commission's one-day switch to the Form 600. Specifically, if frequency advisory committees cannot file FCC Form 574s after December 30, 1994, applicants will need to file the new forms at least two weeks (if not longer) prior to that date. Notifications to the hundreds of thousands of commercial carriers, airlines, manufacturers, police agencies, construction companies, petroleum companies, etc. which hold licenses in Part 90 and Part 22 and file applications on a regular basis require a significant amount of time. This educational process cannot be minimized. It is a significant task which is borne by the industry every time the Commission changes a fee or a form. The Commission must recognize that the public interest will not be served by the Commission or frequency advisory committees having to return thousands of applications filed by small businesses or public safety entities which were not afforded the opportunity to learn about the new form.

⁸It is NABER's understanding that the Commission currently distributes 10,000 FCC Form 574s each week. NABER itself prints and distributes, at its own expense, 125,000 Form 574s each year. Clearly, the need for "lead time" to distribute the FCC Form 600 cannot be underestimated.

It has been NABER's experience that when the Commission changes forms or increases the fees which must accompany applications that sufficient lead time is necessary to inform the public. For example, NABER continues to receive incorrect FCC fee checks for approximately nine months after the changes take effect. Moreover, NABER still occasionally receives the multi-part version of Form 574, which has not been used by the Commission for more than five years. While a delay in the adoption of the Form 600 will not eliminate such errors, it will go a long way towards minimizing the inadvertent use of the old 574 and 401 form and the improper use of the new form.

The late date by which the Form 600 will be available in final form will also preclude frequency advisory committees from being able to modify their computer software in time to begin accepting the form. Frequency advisory committees may need up to three (3) months to reconfigure their computer systems in order to begin processing the finalized Form 600. This will add further delay to the licensing process, again needlessly harming many businesses and public safety agencies.⁹

In addition, to make file updates between the frequency advisory committees and the Commission as efficient as possible, those groups' computer systems should have similar file layouts. NABER has not received the file layout information for the Form 600

⁹Such conversion periods could be reduced by "round-the-clock" work. However, the substantial cost entailed by such an intense effort is hardly justified in light of the Commission's own inability to process the form by January 2, 1995 (see Section D below).

from the Commission as it is NABER's understanding that the file layout has not yet been written. This will slow coordination time as databases will need to be manually updated for a period of time.

D. The FCC Is Not Prepared To Accept The New Form

It is NABER's understanding that while the new FCC Form 600 exists on a Commission personal computer, it has not been programmed into the Commission's main computer system for data entry or application processing. NABER has been informed by Commission personnel that the Commission does not anticipate having the computer programming fully completed by January 2, 1995. Therefore, requiring applicants to file applications which the Commission cannot process will only create additional delay in license processing, causing further harm.¹⁰

E. Other Issues

NABER is also concerned that the Commission has failed to address two additional issues in connection with adoption of the new form:

1. The Commission, in conjunction with the Part 90 radio interests, has been working diligently on an electronic filing process ("EDI"). EDI has the potential to substantially reduce the Commission's processing time and resource needs. NABER is

¹⁰If technically feasible, the Commission may wish to continue accepting both forms for a period of time to further ease the transition. The FCC Form 600 already accommodates the transition for the use of NAD 27 coordinates to NAD 83 coordinates by permitting applicants to supply either set of coordinates during the transition. A similar transition may be useful in switching from the FCC Forms 574/401 to the FCC Form 600.

concerned that the rush to implement the FCC Form 600 may delay the implementation of EDI.

For example, to facilitate EDI a transaction set is established and is submitted to ANSI for approval. This transaction set contains the information that is to be transmitted electronically. The set that contains the information that is currently requested on the FCC Form 574 has already been submitted to and approved by ANSI. The Form 600 requests information that is not included on the Form 574. Therefore, additional information has to be added to the transaction set and then resubmitted to ANSI for approval. ANSI only meets a handful of times per year. NABER does not know if ANSI's meeting schedule will coincide with the submission of the updated transaction set.

2. Pursuant to the Commission's Report and Order in PR Docket No. 83-737, frequency advisory committees are required to verify specific portions of the FCC Form 574. The specific sections of the FCC Form 600 that the coordinator will be required to verify has yet to be announced or communicated to NABER.

III. NABER'S REQUEST SATISFIES THE REQUIREMENTS FOR A STAY

When considering a request for a stay the Commission considers: (1) whether the petitioner has made a strong showing that it is likely to prevail on the merits of its appeal; (2) whether the petitioner has shown that, absent a stay, there will be irreparable injury; (3) whether the issuance of a stay would cause substantial harm to other parties interested in the proceeding; and (4) whether a stay would be in the public interest.

Virginia Petroleum Jobbers Association v. Federal Power Commission,
259 F.2d 921 (DC Cir. 1958).

NABER's Motion fully satisfies the relevant criteria to grant a stay. It is clear that neither the industry or the Commission will be ready to utilize the FCC Form 600 by January 2, 1995. Without a stay, many legitimate businesses and public safety agencies will suffer significant delays and confusion in attempting to obtain licenses to satisfy their communication needs. The delays and confusion would have a significant economic impact on such applicants and risk the safety of the public.

Issuance of a stay by the Commission will enable industry associations, as they have done in the past, to provide the wireless industry with the educational resources to provide information concerning the manner in which the form is to be completed as well as other new rules which are now taking effect. NABER is not aware of any party affected by this proceeding that would be harmed by a stay. Therefore, the public interest would be served in delaying adoption of the form until such time as the Commission and the public is fully prepared to utilize the form.

IV. CONCLUSION

WHEREFORE, the National Association of Business and Educational Radio, Inc. respectfully requests that the Commission act in accordance with the views expressed herein.

Respectfully submitted,

**NATIONAL ASSOCIATION OF BUSINESS
AND EDUCATIONAL RADIO, INC.**

By: 
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PUBLIC NOTICE

FEDERAL COMMUNICATIONS COMMISSION
1919 M STREET N.W.
WASHINGTON, D.C. 20554

50369

News media information 202/632-5050. Recorded listing of releases and texts 202/632-0002.

October 26, 1994

PUBLIC INFORMATION COLLECTION REQUESTS SUBMITTED TO OFFICE OF MANAGEMENT AND BUDGET FOR REVIEW

The Federal Communications Commission has submitted the following information collection requests to OMB for review and clearance under the Paperwork Reduction Act of 1980, 44 U.S.C. Section 3507. Persons wishing to comment on these information collections should contact Timothy Fain, Office of Management and Budget, Room 10102, NEOB, Washington, D.C. 20503, (202) 395-3561. For further information, contact Judy Boley, Federal Communications Commission, (202) 418-0214.

Please note: Pursuant to 5 C.F.R. Section 1320.18, the Commission has requested expedited review of these collections by December 1, 1994.

Title: Application for Mobile Radio Service Authorization or Rural Radiotelephone Service Authorization

Form No.: FCC 600

OMB Control No.: None.

Action: New collection.

Respondents: Individuals, State or local governments, Non-profit institutions, Businesses or other for-profit, including small businesses.

Frequency of response: On occasion.

Estimated Annual Burden: 151,000 respondents; average 4 hours per respondent; 604,000 hours total annual burden.

Needs and Uses: FCC Form 600 is filed by applicants applying for a new or modified authorization to provide or use commercial, private, both commercial and private, or fixed service. The data is used to determine eligibility, for rulemaking proceedings, enforcement purposes and for resolving treaty obligations.

Title: Notification of Commencement of Service or of Additional or

Modified Facilities

Form No.: FCC 489

OMB Control Number: 3060-0318

Action: Revised collection.

Respondents: Business or other for profit, including small businesses

Frequency of response: On occasion.

Estimated Annual Burden: 10,000 respondents; average 3.62 hours per response; 36,200 hours total annual burden.

Needs and Uses: FCC 489 is a multi-purpose form used by commercial mobile radio service providers to notify the Commission of commencement of service, satisfaction of construction requirements, additional transmitters, minor modifications to stations and for certain other miscellaneous purposes. FCC 489 is used by the Commission to verify compliance with construction and service requirements and to update the database.

Title: Application for Assignment of Authorization or Consent to Transfer of Control of License.

OMB Control Number: 3060-0319

Action: Revised Collection.

Respondents: Business or other for profit, including small business.

Frequency of Response: On occasion.

Estimated Annual Burden: 5,000 respondents; average 3 hours per response; 15,000 hours total annual burden.

Needs and Uses: FCC 490 is filed to solicit Commission approval to assign a radio station authorization to another party or to transfer control of a licensee. The information collected in the application is used by Commission staff to determine whether the proposed sale of a radio station and the qualification of the new carrier are in compliance with the requirements of FCC rules and regulations.